

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the)	NOTICE OF PUBLIC HEARING
amendment of ARM 37.86.1105)	ON PROPOSED AMENDMENT
pertaining to medicaid)	
outpatient drugs, pharmacy)	
reimbursement for Medicare)	
Part D dual eligibles)	

TO: All Interested Persons

1. On December 16, 2005, at 11:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on December 5, 2005, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@mt.gov.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.86.1105 OUTPATIENT DRUGS, REIMBURSEMENT (1) remains the same.

(2) The dispensing fee for filling prescriptions shall be determined for each pharmacy provider annually.

(a) The dispensing fee is based on the pharmacy's average cost of filling a prescription. The average cost of filling a prescription will be based on the direct and indirect costs that can be allocated to the cost of the prescription department and that of filling a prescription, as determined from the Montana dispensing fee questionnaire. A provider's failure to submit, upon request, the dispensing fee questionnaire properly completed will result in the assignment of the minimum dispensing fee offered. A copy of the Montana dispensing fee questionnaire is available upon request from the department.

(b) through (d) remain the same.

(3) In-state pharmacy providers that are new to the Montana medicaid program will be assigned an interim \$3.50 dispensing fee until a dispensing fee questionnaire, as provided in (2) ~~above~~, can be completed for six months of operation. At that time, a new dispensing fee will be assigned which will be

the lower of the dispensing fee calculated in accordance with (2) for the pharmacy or the \$4.70 dispensing fee. Failure to comply with the six months dispensing fee questionnaire requirement will result in assignment of a dispensing fee of \$2.00.

(4) through (5)(b) remain the same.

(6) Dual eligible recipients qualify for pharmaceutical drug coverage under medicare Part D prescription drug plans (PDPs) on January 1, 2006 under 42 USC 1302, 1395w-101 through 1395w-152 (2005), the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA). The MMA allows PDPs to exclude from coverage the drug classes listed in 42 USC 1396r-8(d)(2) (2005). Montana medicaid may also exclude these drugs and has chosen to do so except for limited nonprescription drugs, barbiturates, and benzodiazepines identified on the department's drug formulary. On January 1, 2006, Montana Medicaid's reimbursement for outpatient drugs provided to dually eligible recipients, for which third party payment is not available, will be limited to barbiturates, benzodiazepines, and nonprescription drugs identified on the department's drug formulary.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-6-101, 53-6-113 and 53-6-141, MCA

3. Beginning January 1, 2006, Medicare prescription drug plans (PDPs) will be available to people with Medicare coverage. This is a federal program created by the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA) 42 USC 1302, 1395w-101 through 1395w-152, and 1395hh. The PDPs are also referred to as "Medicare Part D benefits".

"Dual eligibles" are individuals who are entitled to Medicare Part A and/or Part B and are eligible for some form of Medicaid benefit. Medicare Part A coverage pays for hospitalization costs. Medicare Part B coverage pays for physician services, lab and x-ray services, durable medical equipment, and outpatient and other services. Under the MMA, dual eligibles will also automatically qualify for Medicare Part D benefits.

The Federal Government, acting through the Centers for Medicare and Medicaid Services (CMS), automatically and randomly enrolls dual eligible individuals in a PDP if they do not choose a plan. CMS will notify these individuals which Medicare PDP they will be enrolled in on January 1, 2006, if they take no action prior to December 31, 2005.

This rule change is necessary to coordinate the state Medicaid pharmaceutical benefit with this change in the Federal Medicare program. As of January 1, 2006, dual eligible individual's pharmaceutical coverage will be provided by a PDP.

In addition to establishing Medicare PDPs and automatically enrolling dual eligibles, the MMA allows insurers to exclude certain drugs from PDP coverage. Federal law also allows state

Medicaid plans to exclude these drugs. Montana Medicaid has excluded all the drugs it may exclude except some nonprescription drugs, barbiturates, and benzodiazepines identified on the department's drug formulary. The Montana Medicaid program currently covers these drugs. It will continue to provide these drugs to dual eligibles because the drugs will not be covered under a PDP. All other pharmaceutical benefits will be provided through PDP coverage.

The Department chooses to require people eligible for Medicare who do not have other creditable prescription drug coverage to enroll in a Medicare PDP in order that available state funds will be used to provide benefits to the most people in the most cost-effective manner.

In addition, the department pays to Medicare a monthly state contribution for each person in the state who has Medicaid and Medicare, to pay for prescription drug coverage. Medicaid therefor cannot continue to pay for prescription drug coverage after December 31, 2005, for people with both Medicaid and Medicare. There will no longer be federal match available for Medicare Part D covered drugs under Montana Medicaid, other than the limited drug classes that the Department will continue to cover.

Other alternative considered

One alternative to the proposed amendment would be to leave the rule as it stands. This alternative was rejected as too costly and an inefficient use of available funds.

The second alternative would be to require Medicare beneficiaries to enroll in a Medicare approved PDP while Medicaid continues to pay for prescription drugs not covered by the beneficiaries' PDP. This alternative was rejected because the Medicare prescription drug benefit is comprehensive and has built-in beneficiary protections with oversight by CMS. CMS assures that Medicare beneficiaries will have access to all medically necessary prescription drugs and access to quick and efficient exceptions and appeals processes.

There is no fiscal impact as a result of the proposed changes.

4. These rule changes will be applied retroactively to January 1, 2006.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on December 22, 2005. Data, views or arguments may also be submitted by facsimile to (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The Department also

maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Russ Cater
Rule Reviewer

Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State November 14, 2005.